**LEONG TECK EWE**

**v.**

**TRACTORS (M) SDN. BHD.**

HIGH COURT MALAYA, SHAH ALAM
WAN YAHYA J
[CIVIL APPEAL NO. 11-3-89]
13 DECEMBER 1989

***CONTRACT:*** *Agency - Contract for goods sold and for services rendered - Whether party to the contract was acting as agent for a company - Proof of agency - Whether personally liable under the contract - Section 183(1) Contracts Act 1950 - Oral evidence - Section 92 Evidence Act 1950.*

***AGENCY:*** *Creation - Whether contracting party was acting as an agent of a company of which he was a director - Whether documents signed in his personal capacity - Whether there was proof of agency.*

In the Magistrates Court, the respondent claimed against the appellant for goods sold and services rendered. Judgment was entered in favour of the respondent. The appellant appealed to the High Court.

The only issue raised by the appellant in his defence is that he had contracted for the service not in his personal capacity but as agent of a company of which he was a director.

**Held:**

**[1]** All the documentary evidence produced in support of the respondent's claim indicate specifically that the documents were made out in the personal name of the appellant and was likewise acknowledged.

**[2]** The appellant had failed to prove that he had acted as an agent. The learned Magistrate had made a finding of fact based on the appellant's non-disclosure of his alleged principal.

**[3]** Even if the appellant had successfully proved that the respondent was aware that he was acting as an agent for a third party, his mere acknowledgment of the documents in his own name without qualification, would nevertheless give the respondent a right to sue either the agent or the principal.

**[4]** On the issue of the exclusion of oral evidence under s. 92 of the Evidence Act, the Magistrate had considered both the appellant's and respondent's evidence and had arrived at a factual finding that the contract was entered into by the appellant in his personal capacity.

*[Appeal dismissed with costs.]*

**Cases referred to:**
*Pernas Trading Sdn. Bhd. v. Persatuan Peladang Bakti Melaka [1979] 2 MLJ 124*
*Rusholme Ltd. v. S.G. Read Ltd. [1955] 1 All ER 180*
*Calder v. Dobell [1871] LR 6 CP 486*

**Legislation referred to:**
Contracts Act 1950, s. 183(c)
Evidence Act 1950, s. 92

**Other source referred to:**
*Bowstead on Agency*, 14th Edn., at p. 352.

*For the appellant - Arifin & Partner*
*For the respondent - Ludher, S.C. Kok & Co.*

**JUDGMENT**

**Wan Yahya J:**

The respondent claimed in the Court below for a sum of RM7,293.87 being the price of replacement parts supplied for and services to a tractor at the request of the appellant/ defendant (hereinafter referred to as appellant). It was not disputed that such a request was made and that the respondent/plaintiff (hereinafter referred to as respondent) had satisfactorily carried out the replacement and repair job. Indeed all the documents disclosed the goods supplied and the work done were acknowledged and signed by the appellant. The only issue raised by appellant in his defence is that he had contracted for the service not in his personal capacity but as an agent of a company of which he was the director.

The learned Magistrate after hearing witnesses for both parties and looking at all the documents decided in favour of the respondent. In her grounds of judgment, the learned Magistrate stated clearly that she had found from the documentary and oral evidence that the appellant had contracted in his personal capacity and that the appellant had failed to prove that he had acted as an agent. Further and no doubt in the alternative the Magistrate went on to express her opinion that following the Supreme Court's decision in *Pernas Trading Sdn. Bhd. v. Persatuan Peladang Bakti Melaka* [1979] 2 MLJ 124, the appellant was estopped from proving the fact.

The appellant now takes both issues on appeal. The Magistrate approached the first issue by examining the various documents produced by the plaintiff and she noted that the service invoice, the job acceptance form, the despatch advices, van and work orders were all personally signed by the appellant without any qualification. Having thus satisfied himself - then the plaintiff had proved the appellant's liability at this stage. The learned Magistrate next considered the defence case and concluded that the appellant had failed to show her that he had entered into the agreement as an agent. She had examined the evidence of the defendant but could not find any mention being made about the principal. In my view she was entitled to arrive at this conclusion because on the face of the various documents, the appellant appeared to have contracted in his own name. All the documentary evidence produced in support of the plaintiff's claim indicate specifically that the documents were made out in the personal name of the defendant and was likewise acknowledged. As against these documentary proofs, the appellant could only adduce the defendant's own oral evidence. The learned Magistrate must have considered such oral evidence to arrive at her conclusion that no representation as to any urgency at all was made by the appellant at the time of executing the documents. In this respect, it may be helpful to refer to the comments in *Bowstead on Agency*, 14th Edn., at p. 352.

> Although the general rule often said to be that an agent is not liable on the contracts he makes for his principal, there are nevertheless many cases where he is in fact so liable. The agent, first, may not disclose the existence of his principal: in such a case he is personally liable even though his principal may have certain rights to intervene under the undisclosed principal doctrine.

Similarly by s. 183(c) of our Contracts Act, an agent is also personally liable when he makes no disclosure of his principal.

The learned Magistrate had made a finding of fact on the appellant's non disclosure of his alleged principal. It is a finding he is well entitled to make on the balance of probability, a consideration of the circumstance relating to the issuance and signing of the documents. In *Rusholme Ltd. v. S.G. Read Ltd.* [1955] 1 All ER 180 at 183 Pearce J said:

> The fact that a person is agent and is so known to be does not itself prevent his incurring personal liability. Whether he does so is to be determined by the nature and terms of the contract and the surrounding circumstances. When he contracts on behalf of a foreign principal there is a presumption that he is incurring a personal liability, unless a contrary intention appears. The same presumption arises when he signs in his own name without qualification.

Even if the appellant had successfully proved that the respondent was aware that he was acting as an agent for a third party, his mere acknowledgment of the documents in his own name, without qualification would nevertheless give the respondent a right to sue either the agent or the principal.

In *Calder v. Dobell* [1871] LR 6 CP 486:

> a broker called Cherry, contracted in his own name to buy goods from the plaintiffs, having previously disclosed to them that he was acting as agent for the defendant.

In my opinion the Magistrate was right in making the finding as she did on the first issue. The second alternative ground expressed by the Magistrate relates to the exclusion of oral evidence under s. 92 of the Evidence Act. She cited Pernas Trading case,

> ... purporting on the face of it to be made by the defendant and subscribed by him for the sale and delivery ...

To my mind *Pernas Trading* case is slightly different from the case before us in that the acknowledgment on the invoices were of such a nature that left no room for doubt because there was no dispute that on the face of the invoices the defendant had not contracted as an agent and was unaware of such fact. In spite of that the defendant in that case had attempted to introduce subsequent oral evidence to alter the terms of the contract.

In the present case, the appellant was a director of the alleged company of his principal and there was dispute as to the possibility of the respondent having knowledge of the principal and therefore going into contract with the appellant as an agent. To that extent the evidence adduced by the appellant was admissible.

However, as I have mentioned earlier the view was only used by the learned Magistrate as an alternative ground. Despite all she said about estoppel she had admitted and considered all the evidence adduced by the defendant and had at no time applied this preposition of law. Neither did she discuss how and when she would apply this principle in the light of the evidence she had recorded. On the contrary, she had considered both the appellant's and respondent's evidence and arrived at a factual finding that the contract was entered into by the appellant in his personal capacity.

The second issue mentioned in the learned Magistrate's ground of judgment is therefore academic and deliberative in nature and does not affect her earlier findings which I considered was rightly made.

I therefore dismiss this appeal with costs.

Also found at [1990] 2 CLJ 249